

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.198 of 2002

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MD. ALAM, SON OF KALOO MIAN, RESIDENT OF VILLAGE-TETARIYA,
P.S.-KASMA, IN THE DISTRICT OF AURANGABAD.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Ashok Kumar Singh No.3.

For the State : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 09-01-2015

Heard learned counsel for the appellant as well as
learned Additional Public Prosecutor.

2. Learned counsel for the appellant fairly submitted
that as during course of trial, the defence could not sail its case
properly and on account thereof, even having sufficient
material to demolish the evidence of the witnesses, did not
succeed. Also submitted that save and except PW-4, none is an
eyewitness to occurrence. So far PW-4 is concerned, although
he has not properly been tested however, on the date of his
examination he had disclosed his age as 12 years and that
being so, on the date of alleged occurrence he was aged about
9 years a child, having every opportunity of being tutored,
though not confronted. The occurrence is said to be within
midst of chilly winter season and perhaps, the fire might have
broke up out of furnace which were commonly used at village
side whereupon, in the background of admitted animosity
amongst the parties, the appellant along with others have been

falsely implicated. It has further been submitted that there was no source of light and as the PW-4 was carrying bundle of straw over his shoulder, and then in that event the identification, as claimed was also not possible. But fairly submitted that as the witnesses have not been cross-examined therefore the appellant is bound to face its consequence.

3. It has also been submitted that occurrence is of the year 1996 and more than 18 years have passed. Further submitted that appellant, on account of own fault is bound to face its consequence and on account thereof, is ready to compensate the prosecution in terms of Section 357 of the Cr.P.C. It has also been submitted that in the aforesaid background, the sentence already undergone be considered as a substantial sentence along with the amount which, the appellant will deposit to facilitate the informant to receive the same in lieu of compensation. Learned counsel for the appellant has fairly submitted that appellant is ready to pay Rs.50,000/- by way of compensation.

4. Learned Additional Public Prosecutor fairly submitted that when appellant is ready to compensate the prosecution, then in that event, the remission could be given to the appellant on the score of substantial sentence.

5. After hearing both sides as well as considering the fact that it happens to be a case of mischief by fire whereunder the 'Baithka' of informant has gutted which could very well be compensated. On account thereof, as well as taking into

account the submission made on behalf of appellant, holding the finding recorded by the learned lower court affirmed to the extent of 436 IPC, instead of substantial sentence inflicted by the learned trial court to a tune of R.I. for 5 years, the same is modified as period already undergone as well as the quantum of fine so inflicted by the learned lower court to a tune of Rs.5000/- is enhanced to a tune of Rs.50,000/-. The aforesaid amount must be deposited within three months from the date of production / receipt of the instant judgment. In case, of default of payment of fine, appellant will undergo R.I. for two years. Appellant is on bail hence period of bail is extended up to three months in terms of Section 437(A) of the Cr.P.C. In case of failure at the part of the appellant to deposit the aforesaid amount within the aforesaid stipulated period of three months, the learned lower court will be at liberty to proceed against the appellant in accordance with law. In case the amount is deposited by the appellant, Rs.40,000/- will be handed over to the informant, Md. Hasim on proper identification in terms of Section 357 of the Cr.PC.

With the aforesaid modification in the sentence, instant appeal is dismissed.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated, the 9th day of Jan, 2015
Prakash Narayan

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